COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Petition of Verizon New England, Inc. d/b/a Verizon Massachusetts)	
For Arbitration of Interconnection Agreements between Competitive)	D.T.E. 04-33
Local Exchange Carriers and Commercial Mobile Radio Service)	
Providers in Massachusetts Pursuant to Section 252 of the)	
Communications Act of 1934, as amended, and the Triennial)	
Review Order)	

MCI's REPLY BRIEF

MCI, Inc. ("MCI"), on behalf of its operating subsidiaries that have interconnection agreements with Verizon Massachusetts ("Verizon"), submits this reply brief on the non-rate issues that are in dispute between MCI and Verizon in this consolidated arbitration proceeding. MCI's initial brief sufficiently states MCI's position on the issues in dispute between MCI and Verizon. Nevertheless, certain points warrant further argument in light of arguments advanced by Verizon in its April 5, 2005 initial brief. For the ease of the reader, this reply brief sets forth MCI's responsive argument underneath the heading of the appropriate issue.

ARGUMENT

ISSUE: 1 Should the Amendment include rates, terms, and conditions that do not arise from federal unbundling regulations pursuant to 47 U.S.C. sections 251 and 252, including issues asserted to arise under state law?

Verizon asserts that the Amendment should only include Verizon's unbundling obligations arising under sections 251 and 252 of the 1996 Act, and the FCC's implementing regulations, because they are the sole source of Verizon's unbundling obligations. Verizon Brief, p.4. As a result, Verizon argues, it is appropriate to modify the change of law provisions in the underlying interconnection agreements with several CLECs and require that changes in Verizon's unbundling obligations under the interconnection agreement automatically track changes in sections 251 and 252 and the FCC's unbundling rules. Verizon Brief, p. 4.

Verizon misstates federal law when it asserts in its initial brief that

> Verizon proposed its Amendments and filed its Petition to bring its interconnection agreements into compliance with sections 251 and 252, as interpreted by the FCC. As discussed below, *no other source of law can override the FCC's delineation of unbundling obligations.*

Verizon Brief, p. 17 (emphasis added). Verizon ignores the imposition of unbundling obligations by Congress in section 271 of the 1996 Act, which Verizon must continue to comply with in order to keep its authorization to provide interLATA services in Massachusetts. [1]

Verizon further argues that it may the limit the scope of its contractual unbundling obligations to those prescribed by section 251 and the FCC's rules because there is, Verizon asserts, "no lawful basis to include section 271 obligations in the section 252

[1] *TRO*, ¶665.

Amendment arbitration." Verizon Brief, p. 136. This argument flies in the face of the language of the 1996 Act.

In section 271 (c) of the 1996 Act, Congress required the Bell Operating Companies to demonstrate (1) that they offer "access and interconnection" to their network facilities through either an approved section 252 agreement or through the filing of a statement of generally available terms ("SGAT"), 47 U.S.C.§271(c)(1), (2); and (2) that "such access and interconnection" meets the requirements of the 14-point "competitive checklist" set forth in section 271(c)(2)(B).

Verizon does not have an effective SGAT in Massachusetts. Accordingly, under the clear and unambiguous language of section 271, it must demonstrate continued compliance with the checklist by reliance on an agreement approved under section 252 that sets forth all of the requirements of the competitive checklist. The statute does not contemplate any other alternatives under federal law for making section 271 arrangements available to competing providers. Further, nothing in the detailed provisions of sections 251 and 252 prohibits a state commission from requiring that an ILEC set forth in a section 252 agreement all of its wholesale obligations, including those obligations that may exist under section 271 but are no longer compelled by section 251. The Department therefore should require that rates, terms and conditions for unbundling under section 271 be included in the parties interconnection agreements.

ISSUE 2: What terms and conditions and/or rates regarding implementing changes in unbundling obligations or changes of law should be included in the Amendment to the parties' interconnection agreements?

Verizon has proposed to limit its unbundling obligations to only those set forth in 47 U.S.C. § 251 and 47 CFR, Part 51, thus allowing Verizon to implement changes in law by issuing notices to affected carriers without the necessity of going through the change of law process included in Verizon's interconnection agreement with MCI. Verizon justifies this approach – automatically flowing through to the interconnection agreement changes in federal unbundling rules under section 251 as Verizon interprets them – by stating that it will provide for "automatic implementation of any subsequent reductions in unbundling obligations without the wasteful and prolonged procedure that is underway here." Verizon Brief, p. 4.

Verizon's approach assumes the validity of its argument that section 252 agreements can contain only wholesale obligations set forth in section 251 and the FCC's implementing regulations, regardless of any state law obligations or the requirements of section 271, an argument that MCI has challenged in the discussion in issue No. 1. Further, Verizon cites nothing in the *TRO* or *TRRO* for the proposition that its proposed language is required and in fact these FCC orders do not establish rules concerning how changes in law are to be implemented and do not invalidate the parties' current change of law provisions. Verizon's proposal goes well beyond implementing the changes in law mandated by the FCC in the *TRO* and the *TRRO* and would completely gut the change of law procedures established by the parties in their original agreement. Verizon should not be permitted to use this proceeding as an excuse to put in place new change of law provisions that it now deems preferable to the provisions to which it previously agreed.

ISSUE 20: What obligations, if any, with respect to the conversion of wholesale services (e.g. special access circuits) to UNEs or UNE combinations (e.g. EELs), or vice versa ("Conversions"), should be included in the Amendment to the parties' interconnection agreements?

a) What information should a CLEC be required to provide to Verizon (and in what form) as certification to satisfy the FCC's service eligibility criteria to (1) convert existing circuits/services to EELs or (2) order new EELs?

b) Conversion of existing circuits/services:

1) Should Verizon be prohibited from physically disconnecting, separating, changing or altering the existing facilities when Verizon performs Conversions unless the CLEC requests such facilities alteration?

2) What type of charges, if any, and under what conditions, if any, can Verizon impose for Conversions?

3) Should EELs ordered by a CLEC prior to October 2, 2003, be required to meet the FCC's service eligibility criteria?

4) For conversion requests submitted by a CLEC prior to the effective date of the amendment, should CLECs be entitled to EELs/UNE pricing effective as of the date the CLEC submitted the request (but not earlier than October 2, 2003)?

5) When should a Conversion be deemed completed for purposes of billing?

c) How should the Amendment address audits of CLEC compliance with the FCC's service eligibility criteria?

With respect to Issue 20 (a), Verizon has proposed language in Amendment 2, §3.4.2.3 that would greatly expand upon the FCC's requirement that a CLEC self-certify compliance with the EELs eligibility criteria. Verizon argues that because the FCC has required CLECs to maintain in its possession all of the information necessary to certify compliance, it is, Verizon argues, appropriate to require the self-certification to contain the information in the first instance. Verizon asserts that such a requirement "would impose no meaningful burden" on the CLEC. Verizon Brief, p. 114.

Verizon seeks to expand the reach of the FCC's rules. In the *TRO*, the FCC explicitly stated that "we do not establish detailed recordkeeping requirements in this Order," and further stated that "we do not adopt any of the specific documentation requirements proposed by some carriers in this proceeding." *TRO*, ¶ 629. Verizon cannot sustain its argument that its proposed contract language on this issue is grounded in the FCC's rules or in the text of the *TRO* or the *TRRO*. Verizon's proposed language should be rejected.

ISSUE 31: Should the Amendment address Verizon's Section 271 obligations to provide network elements that Verizon no longer is required to make available under section 251 of the Act? If so, how?

As stated in MCI's statement on issue No. 1, Verizon's obligations under section 271 should be set forth in the Amendment. In addition, MCI notes that Verizon has argued in its initial brief that "there is no such thing as a section 271 Platform" because "section 271 elements do not have to be offered as part of a 'combination'…" Verizon Brief, p. 140. Yet Verizon has failed to address in its brief the suggestion of the *USTA II* court that the non-discrimination provisions of section 202 of the Communications Act might apply to the provisioning of elements under section 271.[2] In ruling upon the legal obligations of Verizon that must be included in the Amendment, the Department must address the application of section 202 of the Communications Act to Verizon's provisioning of unbundled elements under section 271.

[2] *USTA II*, 359 F.3d at 590.

Respectfully submitted,

MCI, Inc.

By:_____

Richard C. Fipphen
Senior Counsel
MCI, Inc.
200 Park Avenue, 6th floor
New York, NY 10166
(212) 519-4624
richard.fipphen@mci.com

Dated: April 26, 2005